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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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[Attorney Information Listed on Next Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DOREEN EICHELBERGER AND  
FELIPE MONTELLANO,  
individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

HOME DEPOT U.S.A., INC., a  
Delaware Corporation, and DOES 1  
THROUGH 100

Defendants

Case No. \_\_\_\_\_

CLASS ACTION COMPLAINT  
FOR:

- (1) FAILURE TO REIMBURSE  
EMPLOYEES FOR REQUIRED  
BUSINESS EXPENSES [Cal.  
Labor Code § 2802];
- (2) UNFAIR BUSINESS  
PRACTICES [Cal. Bus. & Prof.  
Code §§17200, et seq.];
- (3) PRIVATE ATTORNEY  
GENERALS ACT CLAIM  
UNDER LABOR CODE  
SECTION 2699 et seq.; AND
- (4) DEMAND FOR JURY TRIAL

*Plaintiffs' Class Action Complaint*

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21 **ATTORNEYS FOR PLAINTIFFS**

22 **DOREEN EICHELBERGER AND FELIPE MONTELLANO**

1 Plaintiffs Doreen Eichelberger (“Plaintiff Eichelberger”) and Felipe  
2 Montellano (“Plaintiff Montellano”) (collectively “Plaintiffs”), individually and  
3 on behalf of all those similarly situated, by and through their counsel, bring this  
4 Class Action Complaint (“Complaint”) against Defendant Home Depot U.S.A.,  
5 Inc., and Does 1 through 100 (Defendant Home Depot U.S.A., Inc. and Does 1  
6 through 100 shall collectively be referred to as “Defendants” and/or “Home  
7 Depot”) on personal knowledge with respect to themselves and their own acts, and  
8 on information and belief as to other matters, allege as follows:  
9

### 10 I. NATURE OF ACTION

- 11 1. Plaintiffs bring this action on behalf of themselves, on behalf of the  
12 California general public, and as a class action on behalf of Defendants’  
13 Department Managers and Supervisors in California who were employed by  
14 Home Depot from November 4, 15, 2009 through the conclusion of this  
15 action (the “Class Period”) for failure to reimburse employees for business-  
16 related expenses incurred when Defendants’ Department Managers and  
17 Supervisors in California travelled in their own personal vehicles on behalf  
18 of Defendants to Defendants’ other store locations to perform  
19 INTERSTORE INVENTORY TRANSFERS (referred to herein as “ISITs”),  
20 i.e., transporting inventory between stores and/or retrieving items from other  
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1 stores in order to restock their shelves in advance of walk-through visits by  
2 Vice Presidents and/or District Managers.

## 3 4 **II. JURISDICTION AND VENUE**

- 5
- 6 2. Jurisdiction of this Court is proper under diversity jurisdiction and the Class  
7 Action Fairness Act of 2005 ("CAFA"). The Court has jurisdiction of this  
8 case pursuant 28 U.S.C. §§1332(a) and the Class Action Fairness Act of  
9 2005, 28 U.S.C. 1332(d), 1453 and 1711-1715 in that the number of  
10 members of the proposed plaintiffs' class in the aggregate exceeds 5,000  
11 individuals, Plaintiff s are citizens of the state (California) different than  
12 Defendant (Delaware), and the amount in controversy exceeds  
13 \$5,000,000.00 exclusive of costs and interest. Defendant Home Depot is  
14 within the jurisdiction of this Court. Defendant Home Depot transacts  
15 millions of dollars of business in the State of California. Thus, Defendant  
16 Home Depot has obtained the benefits of the laws of the State of California  
17 and is subject to personal jurisdiction by this court. Plaintiffs are citizens of  
18 the state of California and therefore subject to personal jurisdiction in this  
19 court.  
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21 3. Venue is also proper in this district under 28 U.S.C. § 1391 because a  
22 substantial part of the events or omissions giving rise to Plaintiff  
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1 Eichelberger's claims, as well as the course of conduct charged herein,  
2 occurred in this Alameda County within this District and this Division.  
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### 4 III. THE PARTIES

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- 6 4. Plaintiff Eichelberger, who at all relevant times referenced herein, resided in  
7 Oakland, California, is a former employee of Defendants. From  
8 approximately 1999 through December 4, 2012, Plaintiff Eichelberger  
9 worked in Defendants' retail location at 3838 Hollis Street, Emeryville,  
10 California. Until 2010, Plaintiff Eichelberger worked as a front end  
11 supervisor and was promoted to Contractor Services Supervisor in 2011.  
12
- 13 5. Plaintiff Eichelberger, as part of her job duties, travelled in her personal  
14 vehicle from her home store to Defendants other store locations to perform  
15 ISITs and retrieve business supplies e.g. copier paper and journals. Plaintiff  
16 Eichelberger also used her personal vehicle to go to the Department of  
17 Building and Safety to acquire necessary permits on behalf of Defendants.  
18 Defendants had actual and or constructive notice that such travel was being  
19 performed without reimbursement since Plaintiff Eichelberger was required  
20 to acquire the general manager's signature for the application of permits.  
21 Furthermore, the general manager authorized the purchase of these permits  
22 without reimbursement for the travel necessary in order to facilitate the  
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1 purchase of these permits. Plaintiff Eichelberger was not reimbursed for all  
2 her business-related expenses in the form of mileage and vehicle wear and  
3 tear even though management knew or should have known that she was  
4 incurring business-related expenses on behalf of Defendants.  
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- 6 6. Plaintiff Montellano, who at all relevant times referenced herein, resided in  
7 Los Angeles, California, is a former employee of Defendants. From  
8 approximately March 18, 2010 through December 2010, Plaintiff  
9 Montellano worked as a building and lumber associate at the Home Depot  
10 store located at 5600 Sunset Blvd., Hollywood, California. From around  
11 December 2010 through February 2012, Plaintiff Montellano worked as a  
12 Department Supervisor/Manager for the Electrical Department at the Home  
13 Depot store located at 3020 E. Slauson Avenue, Huntington Park, California.  
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15 7. As a Department Supervisor, Plaintiff Montellano regularly used his  
16 personal vehicle to transfer Defendants' products and supplies from one  
17 Home Depot location to another and, as a result, he incurred expenses in the  
18 form of unpaid fuel costs and vehicle wear and tear. He was never  
19 reimbursed for these business related expenses, although Defendants had  
20 notice that Plaintiff Montellano and Defendants' other Department  
21 Supervisors in California were incurring mileage expenses since movement  
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1 of inventory was documented in Defendants' computer system as the  
2 inventory moved from store to store.

- 3 8. Upon information and belief, Defendant Home Depot is a Delaware  
4 Corporation doing business in California by operating numerous locations  
5 throughout the state. Its headquarters and principal place of business is 2455  
6 Paces Ferry Road, N.W., Atlanta, Georgia 30339. Defendants employed  
7 Plaintiffs and similarly situated persons as Department Supervisors in  
8 California.  
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10 9. The true names and capacities, whether individual, corporate, associate, or  
11 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are  
12 currently unknown to Plaintiffs, who therefore sue Defendants by such  
13 fictitious names under Code of Civil Procedure §474. Plaintiffs are  
14 informed and believe, and based thereon allege, that each of the Defendants  
15 designated herein as a DOE is legally responsible in some manner for the  
16 unlawful acts referred to herein. Plaintiffs will seek leave of court to amend  
17 this Complaint to reflect the true names and capacities of the Defendants  
18 designated hereinafter as DOES when such identities become known.  
19 Defendant Home Depot and Does 1-100 shall collectively be referred to as  
20 "Defendants."  
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10. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiffs and the proposed class.

11. Throughout the Class Period, Defendants employed more than 5,000 employees as Department Supervisors in California who performed ISITs on behalf of Defendants without receiving reimbursements for their mileage-related expenses and vehicle wear and tear.

#### IV. CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this case as a class action pursuant to Fed. R. Civ. P. Rule 23(b)(3) on behalf of a class consisting of:

**All current and former Department Supervisors, Managers and all similarly titled employees employed by Defendant Home Depot USA, Inc. in the State of California (hereafter "Class Members") from November 4, 2009 through the present (the "Class Period").**

13. Numerosity. Plaintiffs believe there are more than 5,000 current and former employees in the Class. Given Defendants' systemic failure to comply with



1 California laws outlined in this action, the members of the Class are so  
2 numerous that joinder of all members is impractical.

3 14. Typicality. Plaintiffs' claims are typical of the claims of the members of the  
4 Class, because all Class Members are or were employees of Defendants who  
5 sustained damages arising out of Defendants' failure to reimburse employees  
6 for all mileage expenses incurred while performing ISITs in their personal  
7 vehicles and/or mileage expenses incurred while attending off-site meetings,  
8 such as supervisor meetings and/or training meetings.  
9

10 15. Adequacy of Representation. Plaintiffs will fairly and adequately represent  
11 the interests of the Class. Plaintiffs have no conflict of interest with any  
12 member of the Class. Plaintiffs have retained counsel competent and  
13 experienced in complex class action litigation with sufficient financial  
14 resources to litigate this case through class certification and trial.  
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16 16. Predominance of Common Issues. Common questions of law and fact exist  
17 as to all members of the Class, and predominate over any questions solely  
18 affecting individual members of the Class. Among the questions of law and  
19 fact common to Plaintiffs and the Class are:  
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- 21 a. Whether Defendants have a policy or practice of not reimbursing  
22 Class Members for the mileage expenses they incurred driving their  
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own vehicles for work related purposes, including inter-store transfers, and/or off-site training meetings for Class Members;

- b. Whether Defendants violated Labor Code §2802 and the applicable IWC Wage Order by failing to reimburse Class Members for their out-of-pocket expenses incurred for the use of personal vehicles in the discharge of their job duties;
- c. Whether Defendants violated §17200 et seq. of the Business & Professions Code by failing to provide reimbursement of all mileage-related expenses to Class Members employed in California from November 4, 2009 through the present;
- d. Whether Plaintiffs and other similarly situated aggrieved employees are entitled to recover penalties under California's Private Attorney Generals Act of 2004, Labor Code section 2699 et seq. based on Defendants failure to reimburse Class Members for their mileage-related expenses incurred while performing ISITs, and/or while attending off-site training meetings at other store locations; and
- e. Whether Plaintiffs and the members of the proposed class are entitled to equitable relief pursuant to Business & Professions Code §17200, et seq.

17. Class action treatment is superior to any alternative to ensure the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individuals would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Class members are readily identifiable from Defendants' employee rosters and/or payroll records.<sup>1</sup>

18. Defendants' actions are generally applicable to the entire Class.

Prosecution of separate actions by individual members of the Class creates the risk of inconsistent or varying adjudications of the issues presented herein, which, in turn, would establish incompatible standards of conduct for Defendants.

19. Because joinder of all members is impractical, a class action is superior to other available methods for the fair and efficient adjudication of this

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<sup>1</sup>Under California law, Defendants must keep payroll records for all employees for at least two years. See, Cal. Labor Code §1174(d). Under federal law, Defendants must generally keep payroll records for at least three years. See, 29 C.F.R. Part 516 et seq.

1 controversy. Furthermore, the amounts at stake for many members of the  
2 Class, while substantial, may not be sufficient to enable them to maintain  
3 separate suits against Defendants.

#### 4 **V. FACTUAL ALLEGATIONS**

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6 20. Plaintiffs repeat and re-allege each and every allegation set forth in all of the  
7 foregoing paragraphs as if fully set forth herein.

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9 21. Labor Code §2802 requires employers to indemnify employees for all  
10 necessary expenditures incurred by employees in the discharge of their  
11 duties.

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13 22. Plaintiffs and other members of the Class were employed as Store  
14 Department Supervisors and Managers in California by Defendants at  
15 various times during the Class Period. At any one time during the Class  
16 Period, Defendants employed thousands of full-time Store Department  
17 Supervisors in its different departments (i.e., Appliances, Bath and Faucets,  
18 Building Materials, Contractor Services, Décor, Doors and Windows,  
19 Electrical, Flooring, Front-End, Kitchen, Lighting and Ceiling Fans, Lumber  
20 and Composites, Outdoors, Paint, Plumbing, Storage & Organization, Tools  
21 and Hardware) at its approximately 231 locations in California.

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26 23. At all relevant times herein, Plaintiffs and Class Members utilized their own  
27 vehicles on a regular basis (with a frequency of approximately three to four  
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1 times per week) to travel between the stores at which Plaintiffs and Class  
2 Members were based and Defendants' other locations to perform ISITs and  
3 attend meetings, on behalf of Defendants. Plaintiff Montellano and Class  
4 Members, as part of their job duties, were required to ensure that their  
5 departments' shelves were stocked to achieve a 100% in-stock supply.  
6 Moreover, Plaintiffs and Class Members were required to spend hours  
7 driving to other Home Depot stores to retrieve merchandise so that they  
8 were sufficiently stocked for the "walk-throughs" performed by Defendants'  
9 Vice-Presidents and/or District Managers, who visit each location a few  
10 times per week to ensure that each department has enough stock. Plaintiff  
11 Eichelberger and Class Members were required on a regular basis to use  
12 their own personal vehicle to travel between Defendants' retail locations to  
13 fulfill the large specific individual orders for the Contractor Services  
14 department.  
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20 24. Plaintiffs and Class Members used Defendants' computer system to locate  
21 items at other of Defendants' nearby locations. Regardless of whether or not  
22 ISITS were performed at the store closest to each supervisor's home store  
23 location, all Class Members performed ISITs without mileage  
24 reimbursement. When retrieving items from other stores prior to "walk-  
25 throughs", Plaintiffs and other Class Members routinely drove around for  
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1 hours in their personal vehicles and gathered twenty or more items from  
2 several other Home Depot stores prior to returning to their home store at the  
3 end of their scheduled shifts. Based on documentation given to Plaintiffs  
4 and Class Members, including lists of products that needed to be re-supplied  
5 as well as computerized inventory database information about the ISITs,  
6 Home Depot knew or should have known that Department Managers and  
7 Supervisors were routinely traveling in their personal vehicles to other stores  
8 to re-stock their Home Stores without submitting reimbursement requests  
9 and/or without receiving reimbursement for their significant mileage  
10 expenses incurred in making these trips.  
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14 25. Once the missing items were located in Defendants' computer system, the  
15 Class Member performing the ISIT typically called Defendants' pick-up  
16 location to verify that the merchandise was in stock. In addition, Plaintiffs  
17 and the Class Members utilized inventory scan guns to input information  
18 necessary about the merchandise being transferred to perform an ISIT.  
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22 26. Home Depot's inter-store transfers were documented in Interstore Reports  
23 that were generated from information inputted through Home Depot's  
24 computer system, "My Apron," including the date of the transfer, the item or  
25 product needed, the quantity needed, the name of the approving manager for  
26 the transfer, the store number for the sending store location, the store  
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number for the receiving store location, and the employee ID number.

Through the Interstore Reports, Bills of Lading approved by Defendants' Store Managers, and also through their computer database information, Defendants were aware that Plaintiffs and the Class Members were routinely performing ISITs. Defendants were also aware that that these ISITs were being done with Class Members' personal vehicles since Defendants only maintained one truck per region for use in connection with ISITs. In fact, in the Los Angeles Region, Plaintiff Montellano's home store region, there are about 13 stores and only one truck designated for inter-store transfers. The trucks were only used for extraordinarily large items, and Defendants did not provide any other vehicles for employees to use to perform these ISITs. The truck assigned to Plaintiff Montellano's region was only available for a limited time in the morning at 8:00 a.m. In the Alameda region where Plaintiff Eichelberger worked, there was a single small pickup truck assigned to each store. However, Plaintiff Eichelberger was not able to use the small pickup truck to travel between Defendants' retail locations because Defendants had prioritized that the pickup truck be available for rental by customers between the hours of 6 A.M. and 9 P.M. If the truck was not rented, then it was available for Defendants' employees. Yet, the pickup truck's return was not predictable, and it was regularly out all day by a

1 single employee which resulted in Plaintiff Eichelberger and Class Members  
2 needing to use their own personal vehicles to travel between Defendants'  
3 stores for which they were not reimbursed.

4 27. Defendants' uniform computer system generated a Bill of Lading at the  
5 pick-up location to prepare the item for transfer prompting users for  
6 information about the ISIT, and using the merchandise information from the  
7 scan guns. As noted, at least three to four times per week, the Store  
8 Managers at each Home Depot location sent Plaintiffs and other Class  
9 Members in their personal vehicles to retrieve Defendants' merchandise  
10 from Defendants' other locations and signed paperwork instructing  
11 Department Managers to retrieve these items thereby providing actual or  
12 constructive knowledge to Best Buy that Class Members had incurred or  
13 would incur necessary business-related mileage expenses. Additional  
14 paperwork accompanied the inventory items to the Class Members' home  
15 stores where a Store Manager used his password on the My Apron system  
16 to confirm that the transfer was complete, and verified that Defendants'  
17 merchandise was received at the employee's home store.  
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19 28. In addition to incurring mileage-related expenses performing ISITs,  
20 Plaintiffs and Class Members were required to use their personal vehicles to  
21 travel between the stores at which Plaintiffs and Class Members were based  
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1 and Defendants' other locations to replenish vital business supplies, as the  
2 inventory of these necessary business items became low or even completely  
3 depleted in the home stores of Plaintiffs and the Class Members. If the  
4 supplies were not available at Defendants' other retail locations, Plaintiff  
5 and Class Members traveled to other local businesses to acquire these  
6 critical items. Plaintiffs and Class Members were compelled to use their  
7 personal vehicles to retrieve these supplies from Defendants' other stores  
8 and local businesses because there was no imminent delivery of corporate  
9 supplies, yet these supplies were essential to continue to transact business on  
10 behalf of Defendants. Defendants failed to reimburse Plaintiffs and Class  
11 Members for these incurred business related expenses despite their actual  
12 and/or constructive knowledge that Plaintiffs and Class Members were using  
13 their personal vehicles for these trips and thus incurring expenses for fuel  
14 and vehicle wear and tear.

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20 29. Plaintiffs and Class Members also regularly attended off-site meetings  
21 and/or trainings (i.e., electrical trainings, certification, vendor meetings, and  
22 store meetings) at other Home Depot store locations, and traveled from their  
23 home stores to and from such training meetings in their personal vehicles  
24 without receiving any reimbursements for mileage expenses and vehicle  
25 wear and tear. Because Defendants did not provide transportation for  
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1 Plaintiffs and Class Members to attend these meetings, and Defendants  
2 scheduled these meetings immediately before or after shifts so that Plaintiffs  
3 and Class Members had to travel either from their store to the meetings, or  
4 from the meetings to their home stores, Defendants knew or should have  
5 known that Class Members were regularly using their personal vehicle to  
6 travel to, and attend training meetings, yet Defendant's policy and practice  
7 was not to reimburse Class Members for the mileage-related expenses they  
8 incurred in using their personal vehicles to attend these off-site training  
9 meetings.  
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13 30. At times, Plaintiffs and some Class Members requested that Defendants  
14 reimburse these mileage expenses for traveling between their home stores  
15 and other stores for ISITs and meetings and/or vice-versa, but Defendants  
16 denied these requests.<sup>2 3</sup>  
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20 <sup>2</sup>For instance, Plaintiff Montellano asked Jose Ramos, Defendant Home Depot's  
21 Assistant Manager, for mileage reimbursement for his numerous trips to other  
22 Home Depot locations to retrieve items for stocking in his home store, but Mr.  
23 Ramos denied Plaintiff Montellano's request for mileage reimbursement for these  
24 ISITs. Specifically, Mr. Ramos told Plaintiff Montellano that he (Mr. Ramos) did  
25 not have enough funds in his PNL (i.e. a monetary fund assigned to each store for  
26 expenses) to pay out reimbursements for those trips. Each time that Plaintiff  
27 Montellano asked for his mileage reimbursement for ISITs, he always got the same  
28 response: there are not enough funds in the PNL.

<sup>3</sup> Plaintiff Eichelberger regularly filled out paperwork in order to request mileage  
reimbursement from her General Manager. However, Plaintiff Eichelberger did not



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31. Defendants' District Managers and Vice Presidents who were aware that Plaintiffs and Class Members were using their personal vehicle for ISITs, did not advise Plaintiff and other Class Members to request mileage reimbursement for ISITs and/or for their mileage-related expenses associated with their attendance at off-site training meetings.

32. Through Defendants' policies and failure to properly train Plaintiffs and Class Members in reimbursement practices, and through Defendants' failure to affirmatively reimburse Plaintiffs and Class Members for their personal mileage expenses which Defendants knew or should have known that Plaintiffs and Class Members necessarily incurred during the performance of the job duties of Plaintiffs and Class Members, Defendants required and/or permitted Plaintiffs and the Class Members to bear the burden of paying for the use of their personal vehicles on behalf of Defendants without reimbursement.

33. As a result, Defendants are liable to Plaintiffs and the Class Members for the amounts expended by Plaintiffs and the Class Members in fuel expenses and vehicle wear and tear, plus interest, penalties, and attorneys' fees and costs pursuant to Labor Code §§ 2802, and 2699, et seq.

see evidence of payment of the requested reimbursement amounts in her itemized wage statements.

**VI. CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**FAILURE TO REIMBURSE FOR EXPENSES**

**[Calif. Labor Code §2802]**

34. Plaintiffs re-allege and incorporate by reference the information set forth in all preceding paragraphs, as though fully set forth and alleged herein.

35. Labor Code §2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

36. At all relevant times herein, Defendants knew or should have known that Plaintiffs and the Class Members were using their personal vehicles for ISITs, and/or to attend off-site training meetings, but failed to indemnify Plaintiffs and Class Members for their business-related expenses incurred therein in accordance with Labor Code §2802. During the Class Period, Defendants maintained a practice of not reimbursing employees for the mileage expenses they incurred driving their own vehicles for work related purposes, i.e., for ISITs and to attend trainings and meetings at other Home Depot store locations.

37. As a result of Defendants' conduct, Plaintiffs and the Class Members suffered damages in an amount, subject to proof, to the extent they were not

1 reimbursed for all the mileage expenses they incurred driving their own  
2 vehicles for work related purposes.

3 38. Pursuant to Labor Code §2802, Plaintiffs and Class Members are entitled to  
4 recover the full amount of their un-reimbursed business expenses,  
5 reasonable attorney's fees and costs of suit.  
6

7 **SECOND CAUSE OF ACTION**

8 **UNFAIR/UNLAWFUL BUSINESS PRACTICES**

9 **[Cal. Bus. & Prof. Code §§17200, et seq.]**

10 39. Plaintiffs re-allege and incorporate by reference each and every allegation  
11 set forth in the preceding paragraphs.  
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13 40. Section 17200 of the California Business & Professions Code prohibits any  
14 unlawful, unfair, or fraudulent business practices.  
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16 41. Wage and hour laws express fundamental public policy. Providing  
17 employees with proper reimbursement of expenses is a fundamental public  
18 policy of this State and of the United States. Labor Code §90.5(a) articulates  
19 the public policies of this State to enforce vigorously minimum labor  
20 standards, to ensure that employees are not required or permitted to work  
21 under substandard and unlawful conditions, and to protect law-abiding  
22 employers and their employees from competitors who lower their standards.  
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1 42. Defendants have violated statutes and public policy. Through the conduct  
2 alleged in this Complaint, Defendants, and each of them, have acted contrary  
3 to public policy, have violated Section 2802 of the Labor Code, and have  
4 engaged in other unlawful and unfair business practices in violation of  
5 Business & Professions Code §17200, et seq., depriving Plaintiffs, others  
6 similarly situated, and all interested persons of rights, benefits, and  
7 privileges guaranteed to all employees under law.  
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10 43. Defendants, by engaging in the conduct herein alleged, either knew or in the  
11 exercise of reasonable care should have known that the conduct was  
12 unlawful. As such it is a violation of §17200 et seq. of the Business &  
13 Professions Code.  
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16 44. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs  
17 and others similarly situated have been damaged in a sum as may be proven.  
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19 45. Pursuant to Business and Professions Code §17203, Plaintiffs and the Class  
20 Members are entitled to restitution of monies rightfully belonging to them  
21 for business related expenses that Defendants failed to reimburse and  
22 wrongfully retained by means of its unlawful and unfair business practices.  
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**THIRD CAUSE OF ACTION**

**PRIVATE ATTORNEY GENERAL ACT CLAIMS  
FOR PENALTIES, ATTORNEYS' FEES AND COSTS**

**[CAL. LABOR CODE §§ 2698, 2699, et seq.]**

46. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

47. Under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code Sections 2698-99, et seq., private parties may recover civil penalties for violations of the California Labor Code and applicable IWC Wage Orders. These penalties are in addition to any other relief available under the Labor Code and the applicable IWC Wage Order.

48. As set forth above, Defendants have committed violations of the California Labor Code and applicable IWC Wage Orders, and are entitled to civil penalties. Plaintiffs and the Class Members are entitled to civil penalties based on Defendants' failure to affirmatively reimburse them for their necessary business related expenses incurred in connection with their job duties in accordance with Labor Code §2802.

49. Section 2699.3(a)(1) of the Labor Code provides that, prior to bringing suit, an aggrieved employee "shall give written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and the employer of



1 the specific provisions of this code alleged to have been violated, including  
2 the facts and theories to support the alleged violation.” Pursuant to Labor  
3 Code § 2699.3, on November 20, 2012, Plaintiff Montellano gave notice to  
4 the Labor and Workforce Development Agency and Home Depot of the  
5 specified Labor Code provisions alleged to have been violated herein. Labor  
6 Code § 2699.3 (2) (a) requires the LWDA to notify the employee or  
7 representative within 30 calendar days of the date of the PAGA notice that it  
8 does not intend to investigate. Upon receipt of the notice or if no notice is  
9 received within 33 calendar days of the PAGA notice, the aggrieved  
10 employee can pursue a civil action in court and/or pursue the PAGA claim in  
11 an existing lawsuit. Accordingly, as of December 23, 2012, all  
12 administrative prerequisites to the pursuit of Plaintiff Montellano’s PAGA  
13 claim herein were satisfied.

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19 50. Under PAGA, Plaintiffs and the Class Members are entitled to recover the  
20 maximum civil penalties permitted by law from Defendants for its violations  
21 of the California Labor Code and the applicable California IWC Wage  
22 Order, for each pay period during which a violation of Section 2802 of the  
23 Labor Code occurred, as alleged in this Complaint. Plaintiffs and members  
24 of the Class are also entitled to recover their attorneys’ fees and costs under  
25 Labor Code Section § 2699.  
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**VII. DEMAND FOR JURY TRIAL**

51. Plaintiffs hereby demand trial by jury on their individual and class-wide claims stated herein against Defendants.

**VIII. PRAYER FOR RELIEF**

52. WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class, pray for judgment against Defendants as follows:

An Order that this action may proceed and be maintained as a class action on behalf of the Class;

a) On the First Cause of Action:

- (1) A declaratory judgment that Defendants violated California Labor Code Section §2802;
- (2) Compensatory damages in the amount of Plaintiffs' and the Class Members' out of pocket expenses and/or reimbursement of monies incurred while performing Defendants' business related duties plus interests, costs and attorney's fees to the fullest extent allowable under the law; and
- (3) An award to Plaintiffs and the Class Members for their attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Cal. Code of Civil Procedure §2802(c).

b) On the Second Cause of Action:

- (1) A declaratory judgment that Defendants violated California Business and Professions Code §17200;
- (2) Restitution of the amounts due for unpaid mileage reimbursements due for necessary mileage-related expenses incurred by Plaintiffs and the Class Members, including, but not limited to, the relief permitted pursuant to Labor Code §2802; and

c) On the Third Cause of Action

- (1) A civil penalty against Defendants in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code §2699(f)(2) based on Defendants' violation of Labor Code §2802;
- (2) All penalties available under the Labor Code Private Attorneys General Act of 2004;
- (3) An award of reasonable attorneys' fees against Defendants as specified in Labor Code §2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims; and

1 (4) An award of all costs incurred by the undersigned counsel for  
2 Plaintiffs in connection with Plaintiff Montellano's and the  
3 Class Members' PAGA claim against Defendants, as provided  
4 for in Labor Code § 2699(g)(1);  
5

6 d) Award of prejudgment and post judgment interest;

7 e) An award providing for payment of costs of suit; and

8 f) For all other relief as this Court deems proper.  
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11 Dated: January 18, 2013

Respectfully submitted,

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13 ACKERMANN & TILAJEF, P.C.  
14 MICHAEL MALK, ESQ., APC  
UNITED EMPLOYEES LAW GROUP, P.C.

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16 By:  \_\_\_\_\_

Michael Malk

Attorneys for Plaintiffs and the Class  
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